

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1499 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRAKUMAR @ JITU POPATLAL THAKOR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 23rd November, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act. Four offences punishable under the Bombay Prohibition Act have been registered against the petitioner, two of which are pending trial. In each of the said cases, the petitioner was found to be in possession of sizeable quantity of country liquor. The petitioner's activities are, therefore, believed to be injurious to the public health, and are found to be detrimental to the maintenance of public order within the meaning of Section 3 (4) of the Act. Further, two individuals, on assurance of anonymity, have given statements in respect of bootlegging activities of the petitioner and particular incidents that occurred on 20th October, 1998 and 1st November, 1998. The said incidents are alleged to be prejudicial to the maintenance of public order.

4. It appears that while recording his subjective satisfaction the detaining authority did not rely upon the reports of the chemical examination of the liquor alleged to have been recovered from the possession of the petitioner. Such reports being vital documents, ought to have been taken into consideration and also should have been supplied to the petitioner. The said reports were demanded by the petitioner under his representation dated 31st July, 1999 made to the detaining authority and the detaining authority has immediately furnished the said reports to the petitioner. However, the detaining authority had not taken into consideration this vital evidence while recording his subjective satisfaction. The same is, therefore vitiated. The continued detention of the petitioner is, therefore, invalid.

5. The petition is allowed. The order dated 23rd November, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*